

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION

UNITED STATES OF AMERICA, §
§
Plaintiff, § Civil Action No. 7:24-cv-121
v. §
§
JEFFREY DURGIN, M.D., §
§
Defendant. §

COMPLAINT

For its Complaint against defendant Jeffrey Durgin, M.D. (Dr. Durgin), plaintiff United States of America (United States), by and through the United States Attorney for the Western District of Texas, alleges as follows:

INTRODUCTION

1. The United States, acting on behalf of the Defense Health Agency (DHA) and the TRICARE program, brings this action under the False Claims Act, 31 U.S.C. §§ 3729-3733.
2. TRICARE, a Federal health care program (as defined in 42 U.S.C. § 1320a-7b(f)), provides health care benefits to military servicemembers, retirees, and their dependents.
3. Under the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)(1)(A), a person may not “knowingly and willfully solicit[] or receive[] any remuneration … in return for referring an individual to a person for the furnishing … of any item or service for which payment may be made in whole or in part under a Federal health care program.”
4. Any claim for reimbursement to a Federal health care program that includes items or services resulting from a violation of the Anti-Kickback Statute is a “false or fraudulent claim” for purposes of the False Claims Act. *See* 42 U.S.C. § 1320a-7b(g).

5. Dr. Durgin knowingly and willfully received cash remuneration in exchange for prescribing compounded pain and scar creams that were reimbursed by TRICARE.

6. Dr. Durgin violated the Anti-Kickback Statute and caused the submission of false or fraudulent claims under the False Claims Act.

7. The United States and Dr. Durgin have agreed to resolve these allegations pursuant to a consent judgment as reflected in the motion and proposed order accompanying this filing.

JURISDICTION AND VENUE

8. This action arises under the False Claims Act, 31 U.S.C. §§ 3729-3733. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1345.

9. The acts and omissions at issue in this action occurred in Midland, Texas. This Court has personal jurisdiction over Dr. Durgin, and venue is appropriate in this district under 28 U.S.C. § 1391(b) and 31 U.S.C. § 3732(a).

10. The United States and Dr. Durgin executed agreements tolling the statute of limitations from March 31, 2021, through May 31, 2024, with respect to the cause of action set forth in this Complaint.

PARTIES

11. Plaintiff is the United States, acting on behalf of DHA, an integrated combat support agency of the Department of Defense. DHA manages the TRICARE program.

12. Defendant is Jeffrey Durgin, M.D., a natural person who resides in Midland, Texas.

THE FALSE CLAIMS ACT

13. The False Claims Act permits the United States to recover treble damages and civil penalties from any person who “knowingly presents, or causes to be presented, a false or fraudulent claim for payment of approval.” 31 U.S.C. § 3729(a)(1)(A).

14. Under the False Claims Act, a person acts “knowingly” when he or she “has actual knowledge,” “acts in deliberate ignorance of the truth or falsity of the information,” or “acts in reckless disregard of the truth or falsity of the information.” 31 U.S.C. § 3729(b)(1)(A). Liability does not require “proof of specific intent to defraud.” *Id.* § 3729(b)(1)(B).

15. A “claim” under the False Claims Act includes “any request or demand, whether under a contract or otherwise, for money or property … that is presented to an officer, employee, or agent of the United States.” 31 U.S.C. § 3729(b)(2)(A)(i).

FACTUAL ALLEGATIONS

16. Theodis Jefferson, a former U.S. Army servicemember, owned and operated a company that marketed compounded pain and scar creams to servicemembers and their families on behalf of various compound marketing groups and compounding pharmacies.

17. Jefferson and his company paid TRICARE beneficiaries in exchange for filling prescriptions for compounded creams, paid physicians in exchange for prescribing compounded creams, and received payments from pharmacies and marketing groups.

18. On December 8, 2020, Jefferson pleaded guilty to violating the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)(1). *See United States v. Theodis Lamar Jefferson*, No. 6:20-cr-00036-ADA (W.D. Tex.).

19. Dr. Durgin was one of the physicians paid by Jefferson and his company to prescribe compounded creams to TRICARE beneficiaries. Dr. Durgin was not a defendant in the criminal case.

20. Between April 1, 2015, and August 25, 2015, Dr. Durgin wrote 2,197 prescriptions for compounded creams that were reimbursed by TRICARE. Dr. Durgin received approximately \$50,000 from Jefferson and his company to write these prescriptions.

COUNT I
Violation of the False Claims Act
31 U.S.C. § 3729(a)(1)(A)

21. The United States realleges and incorporates by reference each of the preceding paragraphs as if fully set forth herein.
22. Dr. Durgin knowingly and willfully accepted remuneration to refer TRICARE beneficiaries for items or services for which payment was made by a Federal health care program, in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)(1)(A).
23. The claims for reimbursement tainted by these Anti-Kickback Statute violations were false or fraudulent claims under 42 U.S.C. § 1320a-7b(g).
24. Dr. Durgin knowingly caused false or fraudulent claims for payment or approval to be submitted to the TRICARE program, in violation of 31 U.S.C. § 3729(a)(1)(A).
25. As a result of Dr. Durgin's conduct, the United States incurred damages.
26. Under the False Claims Act, the United States is entitled to recover three times the damages it suffered plus a civil penalty for each violation.

PRAYER FOR RELIEF

WHEREFORE, the United States prays for judgment in its favor and against Dr. Durgin as set forth in the Motion for Final Judgment by Consent and Final Judgment by Consent that accompany this Complaint.

Respectfully submitted,

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United States Attorney

/s/ Thomas A. Parnham Jr.

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